

# Briefing



## Listening, learning, changing Mā Whakarongo me Ako ka huri te tai Crown Response to the Abuse in Care Inquiry

Potential redress options for Lake Alice Unit survivors who experienced torture			
Date:	9 May 2024	Security level:	In Confidence
Priority:	High	Report number:	CRACI 24/017

### Actions sought

Hon Erica Stanford  
Minister responsible for  
coordinating the Crown  
Response to the Abuse in Care  
Inquiry

- Consider the potential redress options for survivors who experienced torture at the Lake Alice Psychiatric Hospital's Child and Adolescent Unit for discussion at your next officials meeting.
- Officials can then prepare material on Lake Alice Unit redress options to be shared with the Crown Response Ministerial Group and Attorney-General for discussion

### Contact for discussion

Name	Position	Telephone	1 <sup>st</sup> contact
Isaac Carlson	Director, Crown Response Unit	s9(2)(a)	
Rebecca Martin	Head of Strategy and Policy, Crown Response Unit	s9(2)(a)	✓

### Agencies consulted

Crown Law Office, Ministry of Health, Ministry of Justice, Ministry of Social Development, The Treasury

### Minister's office to complete

- ☐ Noted
- ☐ Seen
- ☐ See Minister's notes
- ☐ Needs change
- ☐ Overtaken by events
- ☐ Declined
- ☐ Referred to (specify)

Comments

# Briefing



**Listening, learning, changing**  
**Mā Whakarongo me Ako ka huri te tai**  
Crown Response to the Abuse in Care Inquiry

## Potential redress options for Lake Alice Unit survivors who experienced torture

**For:** Hon Erica Stanford, Minister responsible for coordinating the Crown Response to the Abuse in Care Inquiry

**Date:** 9 May 2024

**Security level:** In Confidence

**Priority:** High

**Report number:** CRACI 24/017

### Purpose

1. This briefing provides detail on potential redress that could be provided to survivors of the Lake Alice Psychiatric Hospital's Child and Adolescent Unit (the Lake Alice Unit) who experienced torture. It also provides details on a related matter concerning the treatment of legal fees as part of previous settlement processes that is an ongoing issue for some survivors.
2. Based on your preferred approach, officials will prepare material for discussion with your colleagues at the Crown Response Ministerial Group meeting scheduled for 29 May 2024 and for discussion with the Attorney-General.

### Recommendations

3. It is recommended that you:
  - a. **note** that Crown Response Unit officials are drafting a Cabinet paper, on your instruction, to enable the Government to formally acknowledge that some survivors of the Lake Alice Unit experienced torture;
  - b. **note** that both the UN Committee Against Torture and the Abuse in Care Royal Commission Inquiry have recommended specific redress be provided to survivors of the Lake Alice Unit to recognise the torture that occurred;
  - c. **note** that Lake Alice Unit redress is scheduled to be a topic of discussion at the Crown Response Ministerial Group meeting on 29 May;
  - d. **consider**, for discussion with officials at your next officials meeting, the choices regarding redress for survivors who experienced torture:
    - i. the high-level choice between offering specific redress for torture OR maintaining the existing claims process while wider work on redress is completed; and
    - ii. if specific redress is agreed, options for the overall level of redress to be provided and how the redress is offered, particularly the level of survivor engagement;
  - e. **note** that survivors who settled with the Crown in the first round of settlements regarding the Lake Alice Unit had legal fees deducted from their payments, which subsequent claimants have not;

- [REDACTED]
- f. **consider** the additional advice in this paper relating to the payment of legal fees deducted from round one claimants;
  - g. **note** that following your discussion with officials, the Crown Response Unit will prepare material on Lake Alice Unit redress options and the potential payment of round one claimant legal fees to be shared with the Crown Response Ministerial Group and Attorney-General for discussion; and
  - h. **note** that, subject to the outcome of discussions with the Ministerial Group and Attorney-General, advice on these matters could be included in the intended Cabinet paper on acknowledging Lake Alice Unit torture.

Isaac Carlson  
Director, Crown Response Unit  
9 / 5 / 2024

Hon Erica Stanford  
Minister Responsible for coordinating the  
Crown Response to the Abuse in Care Inquiry  
/ /

### Legal privilege

- 4. This briefing includes references to legal advice and should be reviewed for legal privilege before this paper is publicly released.

### **The Abuse in Care Inquiry and UN Committee Against Torture recommended specific redress be provided to survivors of torture at the Lake Alice Unit**

- 5. As noted in the overview briefing provided on 29 February [briefing CRACI 24/009 refers], the Abuse in Care Royal Commission of Inquiry (the Royal Commission) found that some of the experiences at the Lake Alice Unit, specifically the way electroconvulsive therapy (ECT) and paraldehyde injections were used to punish children and young people, meet the threshold for torture under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention).
- 6. Cases brought to the UN Committee Against Torture (CAT) by Paul Zentveld and Malcolm Richards also resulted in findings against New Zealand. The CAT determined (in reports issued in 2019 and 2022) that in the two cases New Zealand had breached Articles 12, 13, and 14 of the Convention for each survivor. Articles 12 and 13 of the Convention require states to have complaint processes and to conduct prompt and impartial investigations by

competent authorities. Article 14 of the Convention requires states to provide redress with a right to fair and adequate compensation.

7. New Zealand has been asked to update the CAT on its progress in responding to the Committee's findings in a one-year, follow up report in July 2024. The Committee are likely to expect that action has been taken since the periodic review in July 2023. Subject to Ministers' decisions on the process for acknowledging torture, the Government could outline its approach to the Committee in the upcoming follow up report.

8. s9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]. Following your discussion with officials regarding the overview briefing earlier this year, you agreed with the need to formally acknowledge torture.

### **Cabinet decisions are required on formally acknowledging and making additional early redress for torture**

9. Two rounds of settlements, comprising a written apology and payment from the Prime Minister and Minister of Health, have already been paid to many Lake Alice Unit survivors before the CAT decision. The Government made public announcements<sup>2</sup> about the settlements at the time, although much of the detail remained confidential. Settlements on the same terms continue to be available for new claimants through the Ministry of Health (see Appendix One for details).

10. s9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

11. The CAT recommendations create a further expectation that the Crown should provide appropriate redress for the experiences of torture at the Lake Alice Unit. s9(2)(h) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

<sup>1</sup> The three elements of torture, as set out in the Convention, are:

1. any act causing severe pain or suffering, whether physical or mental;
2. intentionally inflicted for such purposes as:
  - a. obtaining from the victim or a third person information or a confession;
  - b. punishing them for an act they or a third person has committed or is suspected of having committed;
  - c. intimidating or coercing them or a third person; or
  - d. for any reason based on discrimination of any kind; and
3. the pain or suffering is inflicted by or at the instigation of or with the acquiescence of a public official or person acting in an official capacity.

<sup>2</sup> See for example: New Zealand Government, 'Settlement for former Lake Alice patients', 7 October 2001, <https://www.beehive.govt.nz/release/settlement-former-lake-alice-patients>



12. You have previously directed officials to draft a Cabinet paper that will enable the Government to formally and publicly acknowledge that some survivors of the Lake Alice Unit experienced torture. Based on the current Crown Response work programme, this paper is expected to be considered at the meeting of the Cabinet Social Outcomes Committee on 24 July 2024, with an initial discussion of options at the Ministerial Group meeting on 29 May 2024.
13. The proposed timing will limit what can be said in New Zealand's follow up report to the CAT in July 2024. It is important, however, for Ministers to have sufficient time to consider the redress options with a focus on the obligations to Lake Alice survivors. Depending on the preferred way forward, suitable indicative comments could be prepared for the CAT report in close consultation with the Ministry of Justice.
14. Decisions are also required on whether, in addition to an acknowledgment of torture, new specific redress should be provided to individual survivors. There are two options around the timing for these decisions – either to make decisions on torture redress ahead of decisions on wider redress redesign or to defer decisions until the redesign is agreed.
15. Ministers could choose to maintain the status quo of the current settlement process for Lake Alice survivors and to defer consideration of redress for torture as part of wider work on redress for survivors of abuse in care. The current settlement process remains open to survivors who have not previously settled with the Crown. Payments provided to those who were abused at the Lake Alice Unit are also higher (on average) than those paid to survivors from other institutions and through other claims agencies.
16. Retaining the current approach could be justified by the expectation that Lake Alice Unit survivors would be able to access changed redress developed in response to the Royal Commission's redress report. This approach would avoid the risk of setting any precedents on payments or support services that could affect the redress options Cabinet considers for a new approach to redress for the wider survivor population. It would also avoid the need to seek additional funding from the between Budget contingency or a future Budget, since agencies advise they have no current funding for new redress.
17. Retaining the status quo would continue to attract criticism from Lake Alice Unit survivors and advocates who consider the CAT findings require specific redress in addition to that already provided. There would need to be clear messages directly to those survivors about the broader redesign of redress, subject to Cabinet decisions regarding the Royal Commission's recommendations. However, targeted communication alone would not be able to mitigate the negative reaction in the face of further delays.
18. Failing to specifically address the finding of torture and further delay to offering meaningful acknowledgment continues to come with significant human costs. It has been five years since the CAT issued its report on Mr Zentveld's case and two years since it issued its report on Mr Richards' case. The delay and uncertainty around the response to the CAT's recommendations has had a considerable impact on both individuals, as well as the wider Lake Alice Unit survivor community. Moreover, the serious health challenges faced by many survivors in this group add further reason to act sooner rather than later.
19. Maintaining the status quo would also likely attract negative international comment from the CAT when New Zealand provides its follow up report in July 2024. In its original

decisions on the claims by Mr Zentveld and Mr Richards, and its observations in response to New Zealand's seventh periodic review in July 2023, the CAT was clear that it considers specific redress must be provided.

20. Ministers could therefore make early decisions on redress for survivors who experienced torture. The subsequent sections of this briefing outline what such redress could look like, the potential costs, and key considerations for how redress could be delivered, particularly the importance of engaging with survivors.

### **Redress for the survivors who experienced torture could consist of a new apology, a one-off payment, and access to therapeutic or assistance services**

21. Drawing on CAT material on reparations under the Convention and Royal Commission recommendations, redress for survivors of abuse, particularly torture, should ideally consist of the following components: an apology or acknowledgement, a payment, and access to appropriate support or rehabilitative services.
22. These three components are not mutually exclusive and can be considered in different combinations and in any order (in terms of when they could be offered to survivors). Considerations for each component are set out below, after initial commentary on the potential number of survivors requiring redress for torture and funding implications.

### **Due to uncertainty around how many survivors experienced torture, two different scenarios are used to indicate potential costs**

23. The Royal Commission has identified 362 children and young people who spent time at the Lake Alice Unit<sup>3</sup>. To date 202 survivors have had settlements from the Crown. Due to the limited nature of information set out in medical records, it is not definitively known which of the children and young people who spent time at the Lake Alice Unit received ECT or paraldehyde injections as punishment.
24. The Royal Commission's report on the Lake Alice Unit noted it had heard from or identified groups of survivors who had been subjected to ECT on different parts of their bodies as punishment. These groups numbered 15–20 young people. Any offer of redress to survivors would need to encourage them to come forward about their experiences.
25. As the Lake Alice Unit operated during the 1970s, survivors who spent time there will be in their late 50s through to their late 60s. Sadly, this means that a number of survivors will have passed on or may otherwise be incapable of coming forward. Some survivors who settled with the Crown in the early 2000s may also have chosen to put this part of their life behind them and may not wish to come forward, even if a new offer of redress is made.
26. Following a public apology made by the Royal Australian and New Zealand College of Psychiatrists earlier this year<sup>4</sup>, the Ministry of Health has observed a slight increase in the frequency of new claims from Lake Alice Unit survivors compared to the average number over recent years – five new claims are currently being considered compared to two on

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<sup>3</sup> Abuse in Care Royal Commission of Inquiry, [Beautiful Children – Inquiry into the Lake Alice Child and Adolescent Unit](#), December 2022, page 66.

<sup>4</sup> The Royal Australian and New Zealand College of Psychiatrists, 'Apology to the survivors of Lake Alice', 20 February 2024. <https://www.ranzcp.org/news-analysis/apology-to-the-survivors-of-lake-alice>



average per year since the previous main settlement rounds. The Ministry has also received contact from some claimants who have settled previously seeking further redress or who do not recall the previous redress process.

27. Given the uncertainty over the number of children and young people that would have been tortured at the Lake Alice Unit, the following analysis of the potential options uses two scenarios of the number of survivors who might be eligible:

- a. 50 survivors – the upper quarter of survivors who have already received a payment, who will therefore have experienced the most severe abuse, and also just above the sum total of survivors noted in the Royal Commission’s report as having experienced ECT on different parts of their bodies as punishment (noting that there could be some overlap in the Royal Commission’s references which would lower the total figure); and
- b. 100 survivors – the upper half of survivors who have already received a payment and who would likely have experienced more serious abuse than the ‘average’ under the payment framework developed in the early 2000s by High Court Justice Sir Rodney Gullen for the group settlements, which could be considered an upper limit on the number of survivors who may have experienced torture.

### **Providing new redress to acknowledge survivors who experienced torture would likely require additional funding**

28. Any potential costs involved with providing new, additional redress to Lake Alice Unit survivors would not be able to be met from existing baselines. The Ministry of Health can only afford to pay approximately two Lake Alice settlements per annum from its Legal Services budget and the Crown Response Unit has no funding for making redress payments. New funding would need to be sought for Vote Health to allow for any additional payments, which could be delivered alongside the Ministry of Health’s existing Lake Alice claim process.
29. Given the proposed timeframes for decisions on possible Lake Alice redress, if new funding was required it could be sought from the between Budget contingency for 2024/2025, as a pre-commitment against Budget 2025, or a discussion held with the Minister of Health about the ability to reprioritise within one of the Vote Health appropriations for Health New Zealand – Te Whatu Ora.
30. To assist you and your colleagues in understanding the scale of possible investment required, this briefing provides indicative costs for providing payments and an access to therapeutic or assistance services, using the two demand scenarios explained above.
31. Seeking funding from the between Budget contingency would involve writing a letter to the Minister of Finance with a funding request template (similar to that used in the Budget process), which would be completed by Crown Response and Health officials in consultation with the Treasury. Requests for funding from the between Budget contingency must demonstrate that the request is of high value, urgent, and cannot be met from within baselines. The likely scale of a 2024/25 contingency request for specific redress for torture (given the options outlined in subsequent sections of this briefing) should be feasible.

32. Seeking a pre-commitment against Budget 2025 would require a Budget funding case to be completed, with funding then approved for the 2024/25 year. As with a contingency request, Crown Response and Health officials would work closely with the Treasury on the application. For both a pre-commitment or contingency application there would need to be discussion of a reprioritisation option.

### **A new apology to Lake Alice Unit survivors that explicitly address torture**

33. The first component of a new redress offering could be a new apology to survivors who were tortured. The previous apology provided to Lake Alice Unit survivors (signed by the Prime Minister and Minister of Health) described experiences at the institution in very general terms, consistent with the approach previously agreed by the government in 2001. The apology text is included in Appendix One. Describing matters in a general way has left many survivors feeling that the apology did not adequately acknowledge their experiences.
34. A new written apology could be offered that explicitly addresses torture and acknowledges experiences at the Lake Alice Unit at greater level of detail, drawing on the CAT and Royal Commission's findings. To avoid the need for detailed individual investigation, which would take significant time and have difficulties in the face of limited records, the apology would still need to describe experiences at a collective rather than individual level. Some features to consider for a new apology are:
- a. explicitly acknowledging that torture occurred and expressing regret (using direct phrases such as 'we are sorry'), and accepting the previous apology did not fully describe the experiences people had;
  - b. using plain language and descriptions that more closely reflect what occurred and survivors' views on what is meaningful and honest;
  - c. avoiding positioning the Crown at the centre of the apology, while still being clear the Crown was at fault;
  - d. acknowledging survivors' fight to keep this in the spotlight, particularly Mr Zentveld and Mr Richards for their CAT cases and those who shared their experiences at the Royal Commission's hearings; and
  - e. committing to taking all reasonably practicable steps to prevent any recurrence of what occurred.
35. While there is significant content that could be taken from the Royal Commission's report and the CAT findings, the apology would need to observe natural justice in the degree to which allegations against individuals are reflected. A careful balancing would be required between recognising the testimony outlined in the Royal Commission's report while avoiding definitive statements about former staff in the absence of any successful prosecutions, particularly since most former senior staff (such as Dr Leeks) are deceased or unfit to respond to allegations.
36. Subject to the preferred way forward, the Crown Response Unit could produce a draft apology text, working closely with Crown Law and other relevant agencies, that could then be tested with the offices of the signing Ministers and the Attorney-General (who has responsibility for matters relating to torture). The draft text would also need to be tested with Lake Alice Unit survivors or their representatives to help ensure it is not re-traumatising and speaks to the nature of their experiences.



- [REDACTED]
37. A new apology could be jointly signed by the Prime Minister, Minister of Health, and yourself, reflecting that the new apology follows on from the previous apology (from the Prime Minister and Minister of Health) but is also part of the Crown's response to the Royal Commission. As with the original apology, the Prime Minister's inclusion helps signal that the Crown is aware of the serious nature of the abuse at the Lake Alice Unit and provides further weight to the apology.
  38. A new apology on its own is unlikely to fulfil the CAT's recommendation for access to appropriate redress, which it noted included compensation and rehabilitation. An apology on its own would also not address the calls from Mr Zentveld and Mr Richards for additional financial redress for the torture findings and could therefore be met with frustration and anger from some survivors. However, a new apology could provide a more explicit personal acknowledgment to Lake Alice Unit survivors that the gravity of what they experienced is understood and deeply regretted by the Crown, which would likely be positively received by some survivors.
  39. While the apology described here would be provided individually to survivors, it is anticipated that the planned public apology by the Crown for abuse in care will speak directly to the experiences in the Lake Alice Unit, which will facilitate wider dissemination of the Crown's regret on this matter.

#### **Progressing a one-off payment acknowledging torture**

40. The second component of a new redress offering could be a one-off payment to acknowledge the experiences at the Lake Alice Unit that constituted torture. It would be in addition to the payment made for the overall experiences of abuse that are recognised through the current claims process operated by the Ministry of Health.
41. A payment would set a precedent for any future payments acknowledging torture, whether delivered as a standalone process or as part of wider changes to redress. If survivors of abuse in other settings were found to have experiences that meet the definition of torture (following due investigation) ahead of wider redress changes, then the approach taken for the Lake Alice Unit would need to be applied by existing historic claims services. This would have potential impacts on the cost and operation of those services. The Lake Alice Unit survivors are the only victims of torture known in New Zealand to date. While the Royal Commission has highlighted serious abuse in a range of institutions, to date none of the instances appear to fulfil all three elements of torture as specified in the Convention.
42. A new payment for torture would need to be considered alongside the existing State claims' processes, since it would effectively establish a baseline for payments related to torture. A new payment would also need to be set at a meaningful level or it would risk appearing to be a token amount from survivors' perspectives, which would undercut its ability to help acknowledge what occurred and assist in improving their wellbeing.
43. With claims settled so far, the average payment varies across different settlement rounds (per Appendix One) from \$68,000–70,000. It should also be noted that payments in the first settlement round are understood to have had legal fees of approximately 40 percent deducted by their lawyers, so the average payment received 'in the hand' was \$41,000.

44. The highest payment made to a survivor of the Lake Alice Unit from round two claimants is \$120,467. As the settlement for round one claimants was allocated to survivors by Grant Cameron & Associates, the Crown does not currently know the largest individual payment made to a round one claimant. For comparison, the Lake Alice Unit maximum payment can be contrasted with the maximum payment available under the Australian National Redress Scheme of AU\$150,000 (NZ\$165,000). While not addressing torture, the Australian Scheme's top payment reflects cruel sexual abuse with a number of compounding factors.
45. There have been no previous payments for torture in New Zealand and no directly comparable international cases that could serve as a precedent. There is one recent international example of limited comparative use, since it addresses a class action for torture by military forces. The United Kingdom government paid approximately £30,000 (NZ\$63,000) in 2019 to each of Cypriot survivors of torture by British armed forces during protests in Cyprus during the 1950s.

s9(2)(g)(i)

[REDACTED]

[REDACTED]			
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

47. The additional payment would need to be offered on a by-application basis. The Crown holds very limited information on which Lake Alice survivors received ECT and/or paraldehyde to assist with a proactive approach to offering the additional payment. In addition, with most settlements made over 20 years ago, any contact details held for previous claimants are significantly out of date.

#### Access to a set of assistance and therapeutic services

48. In material published by the CAT to assist in in the application of the Convention it noted that reparations for torture should include rehabilitation. In addition, one of the Royal Commission's recommended redress functions is to provide survivors of abuse with access to a range of support services.
49. A targeted set of services could be offered to Lake Alice Unit survivors focused on the types of direct and indirect needs the survivors have as a result of their abuse. This could include:

- a. medical costs associated conditions arising from the abusive use of ECT and paraldehyde injections, such as a urological examination and/or surgery, or neurological examination and migraine treatments;
- b. dental costs to address oral health issues or access dentures, or operations such as hip-replacements, that would lead to significantly improved quality of life; and/or
- c. home help or housing modification to help manage chronic conditions or address accessibility issues in survivors' homes.

50. While many Lake Alice Unit survivors have significant psychological and emotional challenges arising from their traumatic experiences, some may have strong feelings about mental health care and may not be interested in accessing this type of support. Nonetheless, for those who want to access some form of mental health therapy, this could remain an option. Survivors would ultimately need have options based on their personal needs and location.

51. The process for providing support access would need to be worked through in detail if Ministers are interested in further advice on this redress component. The best agency to administer support access would need to be confirmed but would ideally be one with existing assistance infrastructure so access could be arranged as promptly as possible. Some survivors may already be accessing support services through ACC, which would help offset the total cost of providing services.

52. As with providing a new payment, any offer of support service is likely to require some additional funding. Some indicative costings based on different levels of demand are provided in Appendix Two. Service capacity in areas where Lake Alice Unit survivors are known to be residing, particularly in the Manawātū and Rangitikei regions in the central North Island, would also need to be closely assessed.

53. Rehabilitation of the victims of torture is a key element in the response expected of a state party under the Convention. Providing access to a targeted range of services would therefore help to address the Crown's obligations. s9(2)(g)(i)

54. It would be important that messages about any support services are clear they are not intended to pre-empt wider changes to redress for survivors of abuse in care but are focused on addressing the immediate needs of Lake Alice Unit survivors.

### **Proactive engagement with Lake Alice survivors could support the design and implementation of any new redress within parameters agreed by Cabinet**

55. If Ministers agree to proceed with some form of specific redress to survivors of torture, the next key consideration is how to deliver it. We recommend the Crown engage with survivors in the process of designing and delivering any new redress.

56. Drawing on the options outlined above, Ministers could agree overall funding to cover a fixed number of survivors. For example, taking the estimate of 100 potential survivors requiring redress and a per survivor redress value of \$65,000 (equivalent to the lower payment level option noted above combined with an average of \$20,000 support costs per survivor), would see a total redress funding of \$6.5 million to be delivered through the agreed package.
57. The Crown Response Unit could be directed to engage with Lake Alice Unit survivors and their representatives to develop an approach for balancing the individual funding to allocate between payments and rehabilitative or support services.
58. The Crown does have particular responsibilities in this matter, due to the breach of the Convention, meaning it is required to have a central role in the process. Nonetheless, what we have learned – most recently through the Royal Commission and the high-level redress design process – is that working alongside survivors increases the likelihood of meeting survivor needs.
59. Engaging with Lake Alice Unit survivors would also help avoid the Crown being seen to prescribe the particular redress to be received by each survivor. The question of ‘what’ redress is needed for individual Lake Alice Unit survivors could be determined in consultation with the survivors themselves. This could allow the Crown to tangibly demonstrate it has taken on board survivors’ calls for a greater ability to determine their own healing and redress journey, and would also address the critique from survivors and the Royal Commission that the Crown continues to act like ‘it knows best’.
60. While engagement would likely require more time before redress is in place in the short term, it could save time in the longer term by helping to deliver redress that meets survivor’s needs and thereby minimise any risk of survivors seeking judicial review or pursuing further action through the CAT.
61. The time allocated for engagement and development of specific offerings would need to be balanced against other work to respond to abuse in care and the age and health of Lake Alice Unit survivors. An overly long period of design and implementation increases the chance that more Lake Alice Unit survivors who experienced torture may die before they could receive proper acknowledgement of their experience. Additionally, any further unexplained delays would leave New Zealand open to criticism by the CAT. Sufficient but not protracted time would therefore need to be agreed.
62. The Crown Response Unit would be able to utilise existing relationships with some Lake Alice Unit survivors, advocates, and relevant experts, to help manage the time and cost associated with engagement, including absorbing a level of cost within baseline.

63. s9(2)(g)(i)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## **Separate to the options to acknowledge torture at the Lake Alice Unit, there are matters relating to the payment of legal fees for potential consideration**

64. As noted above (and set out in Appendix One), there were two rounds of group settlements between the Crown and Lake Alice Unit survivors. The round one claims process had approximately 40 per cent deducted from the total settlement by their lawyers, and therefore their individual payments, for legal costs. The actual amount deducted remains confidential and has been estimated based on survivors' and others' testimony to the Royal Commission.
65. It is likely that this matter will be raised by round one claimants in the course of any work with survivors around additional redress for torture. The Crown could set aside separate funding to pay round one claimants the equivalent value of the legal costs deduction to their payments. This would affect up to 95 claimants from round one and not respond to the CAT recommendations but would address a longstanding equity issue for those survivors.
66. To give a rough sense of what might be involved in addressing this issue, using an estimate of \$2.6 million charged in legal fees the original settlement suggests an average deduction of \$27,368 per claimant. If 50 claimants from round one applied, this would cost approximately \$1.37 million; if 25 claimants came forward it would cost around \$684,000.
67. There are a number of complexities and likely a small amount of administrative costs involved with addressing this ongoing issue that we have discussed with the Ministry of Health. This includes if and how to identify and locate claimants and the payments they received.
68. We also note that despite other claimants not being subjected to the same legal costs deduction, it is possible that paying the top-up to round one claimants could result in other claimants feeling they have 'missed out'. However, providing clear communications to survivors about why those that settled in round one are entitled to this additional payment could help to mitigate these concerns.

### **Next steps**

69. Crown Response Unit officials can discuss the matters raised in this briefing at the planned officials meeting on 13 May 2024.
70. Based on your preferred approach to discussing this with your colleagues, officials can then provide further advice and analysis for the Ministerial Group meeting on 29 May 2024.



## Appendix One: Previous and current Lake Alice Unit settlement processes

The Crown has engaged in two rounds of settlements for Lake Alice survivors to date, the first in 2001 and the second in 2002/3. The Ministry of Health maintains a process for assessing and settling any new claims that arise.

A. Round one settlement
<ul style="list-style-type: none"><li>• In 1999, 88 former Lake Alice Unit patients, represented by Grant Cameron &amp; Associates, filed a joint statement of claim in the High Court. The claim had four causes of action: breach of fiduciary duty, unlawful confinement/false imprisonment, assault and battery, and negligence.</li><li>• The causes of action related to allegations of the use of electroconvulsive therapy and paraldehyde injections as punishments, sexual and physical abuse by staff, staff permitting sexual and physical abuse by other patients, unlawful confinement, administration of medical treatments without consent, and perpetrating and maintaining an environment of extreme fear.</li><li>• In early 2000, the Government determined it would compensate and apologise to former Lake Alice Unit patients rather than defend the claim in the High Court.</li><li>• In October 2000, \$6.5 million was approved for settlement with 95 claimants (the 88 former patients that had filed and seven other former patients that had since come forward). The Crown appointed retired High Court judge Sir Rodney Galle to determine how the settlement monies should be divided among the claimants.</li><li>• Sir Rodney considered the claimants' described experiences to determine how the settlement funds might be distributed. He produced a report about his assessment, which provided general comment on the experiences and the methodology he had used to allocate the settlement monies. Grant Cameron &amp; Associates deducted approximately 40 per cent of the settlement amount in legal costs. The amounts paid out to individuals was strictly confidential and the Crown does not have specific details of individual amounts paid to claimants.</li><li>• Following the settlement, the then Prime Minister and Minister of Health wrote to each claimant and apologised on behalf of the Government for their treatment in the Lake Alice Unit (see below for the text of round one apology letter).</li></ul>
B. Round two settlement
<ul style="list-style-type: none"><li>• The Government decided in 2001 to take steps to settle any outstanding or potential claims by former patients of the Lake Alice Unit. The process was to involve an apology and a confidential settlement process broadly similar to the round one settlement of the class action.</li><li>• Sir Rodney was again instructed by the Crown to consider claimants' experiences and make a determination on the payment amount to be made in line with the principles and criteria he established for the round one process. Sir Rodney was instructed to take into account the absence of substantial legal costs to new applicants.</li><li>• The round two settlement saw 98 former Lake Alice Unit patients collectively receive \$6.3 million in compensation up until 2008. The average settlement was approx. \$70,000.</li><li>• Mr Zentveld filed proceedings in 2005 challenging the instruction to take into account the legal costs deducted from the round one settlement when considering the payments to be made under the round two process. The District Court found for the complainant, which resulted in the reduction applied to the round two payments being reworked. Round two</li></ul>



claimants were then being paid an additional approximately 30 per cent on their initial settlement amounts.

### C. Individual claims

- The Ministry of Health maintains an ongoing process for any new Lake Alice Unit claims that come forward. There have been 9 further settlements since round two was completed in 2008 – an average of one new Lake Alice Unit claim per year.
- Claims are assessed against the principles and criteria established for the round two settlements, with the payment determined by the Ministry of Health's Chief Legal Advisor. The average settlement is \$68,000. The payment is accompanied by a written apology from the Prime Minister and Minister of Health.
- Lake Alice settlement funding has been exhausted and costs for the ongoing claims process are currently met from the Ministry of Health's Legal Services budget on the estimate of two settlements per year maximum.
- The Ministry currently has five outstanding new claims under consideration.

### Example of an apology letter provided to a Lake Alice Unit survivor

Dear [survivor name]

We are writing to you personally on behalf of the Government of New Zealand to apologise for the treatment you received and may have witnessed in the Child and Adolescent Unit of Lake Alice Hospital during the 1970s. We are apologising to all those who were mistreated. We believe it is important to take this step, to enable us to move on from shameful practices in mental health care in New Zealand.

You may be aware that the events at the Child and Adolescent Unit of Lake Alice Hospital have been the subject of investigation. As a government we have been determined to acknowledge what happened and to take what steps we can to put things right. We have publicly stated that, whatever the legal rights and wrongs of the matter, and whatever the state of medical practice at the time, what happened there was unacceptable. On behalf of the Government of New Zealand we sincerely apologise to you as a person fundamentally affected by what occurred in the Lake Alice

We hope that this apology will affirm to you that the incidents and events that you experienced and may have witnessed at the Child and Adolescent Unit at Lake Alice Hospital were not only inappropriate even if judged by the standards of the day, but were also terribly unfortunate. They should not have happened. We very much regret that they did.

We know that this apology cannot change the past, but we do hope it will go some way towards enabling you to move on from your past experiences. In the same spirit we hope that the ex gratia payment the Government has made to you will be of some tangible help.

We wish you all the very best for a positive future.

Yours sincerely

Rt Hon Helen Clark  
Prime Minister of New Zealand

Hon Annette King  
Minister of Health

## Appendix Two: Examples of potential costs of providing support service to survivors who experienced torture

1. Lake Alice Unit survivors have a range of direct and indirect needs as a result of their abuse, including:
  - a. urological and neurological conditions arising from the abusive use of ECT and paraldehyde injections;
  - b. oral health issues resulting from the application of unmodified (that is, non-anaesthetised) ECT and a lack of dental hygiene while in care; and
  - c. chronic health and psychological conditions arising from the physical and emotional trauma.
2. The following table provides example costs of different services to address the survivors' needs.

Support service	Unit cost	Potential frequency	Example cost
Dental services	\$150/dental examination \$400/pre- and post-surgery consultation \$5,000/essential dental work	1-3 examinations and/or consultations Dental and/or surgical procedure	\$6,350
Medical specialist (e.g. urologist)	\$400/pre- and post-surgery consultation \$25,000/surgical procedure	Three consultations and one surgical procedure	\$26,200
Home assistance or modifications	\$150/personal care 3 days a week  \$20,000 home modification	Weekly personal care and house and housekeeping support for 2 years  Installation of home modification	\$15,600  \$20,000
Counselling	\$180/session	Once a fortnight for 2 years	\$9,360

3. The individual service costs can be used to produce different average support cost levels:
  - a. lower level of \$6,000, for limited support or assistance services;
  - b. middle level of \$20,000, for more complex support or assistance needs – which is considered the most applicable scenario; and
  - c. higher level of \$50,000, for scenarios with significant support needs.
4. The table below shows the potential cost of providing supports at the different average levels for two scales in the number of claimants (per commentary set out in the main body of the briefing).

Supports costs	Average support costs per survivor		
Number of claimants	\$6,000	\$20,000	\$50,000
50	\$300,000	\$1,000,000	\$2,500,000
100	\$600,000	\$2,000,000	\$5,000,000